

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD R. FURSTENAU,)	
)	
Plaintiff,)	No. 07 C 6143
)	
v.)	Judge Charles R. Norgle
)	
CITY OF NAPERVILLE, a municipal)	Magistrate Judge Geraldine Soat Brown
Corporation; MICHAEL HULL, in his individual)	
and official capacity; DAVID DIAL, in his)	
official and individual capacity; MICHAEL)	
CROSS; in his individual and official capacity;)	
PETER BURCHARD, in his official and)	
individual capacity; MARGO L. ELY, in her)	
individual and official capacity; and JOE)	
MATCHETT, in his individual an official)	
capacity,)	
)	
Defendants.)	

**DEFENDANT CITY OF NAPERVILLE'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S
THIRD AMENDED COMPLAINT**

INDEX OF EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
Exhibit 1	Naperville Municipal Code, Section 1-5-1
Exhibit 2	Naperville Municipal Code at 1-8A-2(2)

EXHIBIT 1

1-5-1: POWERS AND FUNCTIONS:

The city of Naperville operates under the council-manager form of government. The city council shall consist of the mayor and eight (8) councilmen elected for four (4) year terms as provided by state law ¹.

1. The city council shall be the governing body of the city and shall have the powers and duties prescribed by statute and by ordinance of this city. Such powers and duties include:

1.1. Select and appoint a city manager as the chief administrative officer of the city charged with the powers and duties set forth in section 1-6A-5 of this title.

1.2. Adopt, amend, and repeal ordinances as allowed by statute.

1.3. Determine and review the city's property tax rate on an annual basis.

1.4. Fulfill the city's vision by setting the strategic plan and developing annual goals.

1.5. Approve the city's annual operating budget in pursuit of the city's mission statement.

1.6. Promote the maintenance of the quality of life in Naperville through establishing intergovernmental relationships.

1.7. Establish a comprehensive plan for the city's zoning and land use.

1.8. Approve the 5-year capital improvements plan annually to efficiently maintain the city's infrastructure.

2. No member shall use his/her office or any city employee to promote his/her private enterprises whether compensation is received or not.

3. In addition to the powers and duties incumbent on the mayor as a member of the city council, the mayor has additional executive responsibilities provided by law. The responsibilities include:

3.1. Preside over city council meetings.

3.2. Function as the local liquor and tobacco control commissioner, as set forth in section 3-3-2 of this code.

3.3. Declare emergencies as set forth in subsection 1-8D-2.2 of this title.

3.4. Select members for city boards and commissions with city council approval. (Ord. 05-182, 9-20-2005)

1-5-1: POWERS AND FUNCTIONS:

Footnote 1:

65 ILCS 5/5-2-2, 5/5-2-8.

EXHIBIT 2

1-8A-2: CHIEF OF POLICE; DUTIES:

1. Duties Of The Chief Of Police: The chief of police shall be the keeper of the city jail ², and shall have custody of all persons incarcerated therein. He shall keep records and make reports concerning the activities of the department as may be required by statute or by the city council. The chief shall be responsible for the performance of the police department, and all persons who are members of the department shall serve subject to his orders. The chief shall also be the custodian of all lost and abandoned or stolen property in the city.
2. Authority To Develop Standard Operating Procedures And Rules And Regulations: The chief of police shall develop standard operating procedures and establish rules and regulations for the conduct and guidance of police department personnel as he deems advisable; such procedures and rules, when approved by the city manager, shall be binding on such personnel. (1960 Code, §§3.004, 3.011; amd. 1984 Code)